

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6582

BILL NUMBER: SB 212

NOTE PREPARED: Jan 29, 2008

BILL AMENDED: Jan 28, 2008

SUBJECT: Expense Advances to Driver Employees.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR: Rep. Foley

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill authorizes under certain circumstances an employer that is engaged in the transportation of property or household goods over public highways to deduct from wages earned in a subsequent pay period amounts advanced to a driver employee for wages and business expenses that are not adequately substantiated. It requires an employer to provide notice to the driver employee that amounts in excess of substantiated expenses may be deducted from a subsequent paycheck. This bill also provides that the deduction may not be considered a fine, wage deduction, or wage assignment. It allows an employer and employee to agree to a pay period or pay date other than the periods and dates established by statute, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the bill's provisions. The Department's current level of resources should be sufficient to implement this change.

Explanation of State Revenues: (Revised) *Summary:* The bill's provisions would have no fiscal impact on the Adjusted Gross Income (AGI) Tax. Employers would be permitted to make certain deductions from employees' future wage earnings based on the amount of wages and/or business expenses advanced by the employer to the employee. It also allows an employer and an employee to agree to any other pay period other than semimonthly or biweekly, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code. The bill's provisions requires the payment of all wages

earned in a pay period not more than 10 business days following the close of the pay period, unless a deferred compensation plan has been agreed upon.

Background: The bill specifies that an employer may not make a deduction unless, at the time of the advance, the employer provides notice to the employee that the amount advanced may be deducted from future paychecks. This might occur in the event that the amount advanced exceeds the amount substantiated with either a receipt or other appropriate documentation, as specified in United States Code, Title 26, which includes the following:

- (1) The amount of such expense or item.
- (2) The time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift.
- (3) The business purpose of the expense or other item; and
- (4) The business relationship of the persons entertained, using the facility or property, or receiving the gift.

The bill allows an employer and an employee to agree to any other pay period other than semimonthly or biweekly, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code, which defines deferral of compensation as the following:

A deferral of compensation occurs when an individual has a legally binding right during a taxable year to compensation that (i) has not been actually or constructively received and included in the individual's gross income and (ii) is payable to such individual in a later taxable year.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue.

Local Agencies Affected:

Information Sources: United States Code, Title 26;
http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000274----000-.html; Internal Revenue Code, Section 409A, <http://library.findlaw.com/2005/Jan/17/133682.html>.

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